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1 removal within thirty days after completion of service.

2 **This Is a Proposed “Class Action”**

3 3. Plaintiff brings this case as a class action, Compl. ¶¶ 19-29, and seeks
4 certification of a class under Washington Superior Court Civil Rule 23. *Id.* This action is a
5 proposed “class action” under 28 U.S.C. § 1332(d)(1)(B), defined as “any civil action filed
6 under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
7 procedure authorizing an action to be brought by 1 or more representative persons as a class
8 action.”

9 **Diversity of Citizenship Exists**

10 4. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert jurisdiction over a
11 class action in which “any member of a class of plaintiffs is a citizen of a State different from
12 any defendant.” The named plaintiff is a citizen of Washington. Compl. ¶ 5. Ridecharge is a
13 citizen of Delaware and Virginia because it a Delaware corporation with its principal offices in
14 Alexandria, Virginia. Forsythe Decl. ¶ 5; 28 U.S.C. § 1332(c)(1).

15 **Plaintiff Proposes a Class of More than 100 Persons**

16 5. In the Complaint, Plaintiff asserts a cause of action under the Washington
17 Consumer Protection Act, RCW 19.86.010 *et seq.*, based on violation of the Washington
18 Commercial Electronic Mail Act (“CEMA”), RCW 19.190.010 *et seq.* Compl. ¶¶ 30-41.
19 Plaintiff asserts this cause of action on behalf of himself and “[a]ll residents of Washington State
20 with a cellular telephone number or pager number to which an electronic commercial text
21 message was transmitted by a Defendant, or someone acting on behalf of a Defendant, without
22 prior express consent.” *Id.* ¶ 19.

23 6. Plaintiff alleges that “defendants sent the text messages to numerous consumers in
24 Washington state.” *Id.* ¶ 18. Ridecharge’s business records show that it sent text messages the
25 same or substantially similar to those alleged in the Complaint to more than 100 of Orange Cab’s
26 Washington customers. Forsythe Decl. ¶ 4. The number of persons in the proposed class
27 therefore exceeds 100. 28 U.S.C. § 1332(d)(5)(B).

The Amount in Controversy Exceeds \$5,000,000

7. “In a class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). This is an “action in which the matter in controversy exceeds the sum or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2). The Court may consider facts in the removal petition to determine the amount at issue. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

8. Plaintiff seeks to recover, among other damages, “no less than \$500 per violation of RCW 19.86.010, *et seq* [sic], and RCW 19.190.010, *et seq*.” Compl., Prayer for Relief ¶ B. Plaintiff further seeks “punitive and/or treble damages to the fullest extent allowed by law” and “attorneys’ fees, as authorized by the Washington Consumer Protection Act.” *Id.* ¶¶ E-F. The Court should include the amount of treble damages Plaintiff claims, aggregated on a class-wide basis. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive damages are part of the amount in controversy in a civil action.”); *see also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000) (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)). Where an underlying statute authorizes an award of attorney’s fees, the Court should include the attorneys’ fees and costs Plaintiff claims, also aggregated on a class-wide basis. *See Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007). In the context of CAFA jurisdiction, “it is well established that the Ninth Circuit ‘has established 25% of the common fund as a benchmark award for attorney fees.’” *Jasso v. Money Mart Express, Inc.*, 2012 U.S. Dist. LEXIS 27215 at *20 (N.D. Cal. Mar. 1, 2012) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)).

9. Defendants deny Plaintiff’s allegations regarding their liability, will vigorously oppose certification of the putative class, and deny Plaintiff or the putative class would be entitled to recover any of the amounts they claim. *Grant v. Capital Mgmt. Servs., L.P.*, 2011 WL 3874877, at *1 (9th Cir. Sept. 2, 2011) (defendant not required to admit liability to remove under CAFA); *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010) (same). For

1 purposes of establishing the jurisdictional prerequisites for removal, however, Plaintiff's
 2 allegations place more than \$5 million in controversy. Ridecharge sent more than 5,000 text
 3 messages to Orange Cab's Washington customers that were the same or substantially similar to
 4 those alleged in the Complaint. Forsythe Decl. ¶ 4. Thus, Plaintiff seeks statutory damages
 5 against Defendants on behalf of the proposed class in excess of \$7,500,000: 5,000 text messages
 6 times \$1,500 (treble statutory damages), in addition to attorneys' fees and costs. *See Kavu, Inc.*
 7 *v. Omnipak Corp.*, 246 F.R.D. 642, 646 (W.D. Wash. 2007) (amount-in-controversy requirement
 8 under 28 U.S.C. § 1332(d)(2) met "based on facsimiles allegedly sent to hundreds of persons,
 9 statutory damages of \$500 per violation and potential for treble damages"); Local CR 101(a)
 10 (requiring explanation of "good faith belief" as to amount in controversy). Thus, Plaintiff has
 11 placed far more than \$5 million in controversy.

The Remaining Procedural Requirements Are Satisfied

12
 13 1. The United States District Court for the Western District of Washington is the
 14 federal judicial district embracing King County Superior Court, where the suit was originally
 15 filed. 28 U.S.C. § 128(b). Seattle is the proper division or location for the matter. Local CR
 16 5(e)(1).

17 2. A copy of all process, pleadings, and orders served on Defendants in this action
 18 are attached as Exhibit A, pursuant to 28 U.S.C. § 1446(a).

19 3. Promptly after filing the Notice of Removal, Defendants will give written notice
 20 to Plaintiff's counsel, and will file a copy of this Notice with the Clerk of the King County
 21 Superior Court, pursuant to 28 U.S.C. § 1446(d).

22 Wherefore, Defendants hereby remove this action from the Superior Court of Washington
 23 for King County.

1 DATED this 5th day of April, 2012.

2 Davis Wright Tremaine LLP
3 Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2012, I caused a copy of the foregoing document to be served on plaintiff's counsel via U.S. Mail and email:

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DATED this 5th day of April, 2012.

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